

### REMARKS

Claims 6 and 23-32 are pending in the application. Claim 6 is amended to remove a redundant claim feature. Claim 23 is amended above to rearrange the listing sequence of the dehydrant agent container and contaminated dehydrant agent containers. No new matter has been added to the application by these claim amendments.

The examiner's grounds for rejecting all pending application claims are traversed as set forth below.

#### **I. THE CLAIM 6 OBJECTION**

The examiner objected to redundant language in claim 6. Claim 6 is amended above to delete the redundant language.

#### **II. TRAVERSE OF THE OBVIOUSNESS REJECTIONS**

The examiner rejected claims 23-32 for being obvious over Kinney et al. (USP 4,001,460). It is the examiner's position that Kinney et al. discloses all of the features of the claimed invention except for the additional step of contacting the chamber with the container of dehydrant agent after the container of contaminated dehydrant agent and before the container of aqueous fluid. It is the examiner's position that "absent of showing criticality or unexpected results – it would have been obvious to one of ordinary skill in the art at the time of the invention was to made to flush the chamber with the "clean" dehydrant agent after contacting the chamber with the contaminated dehydrant in order to remove contaminants from the chamber.

The examiner also rejected claim 6 for being unpatentable for obviousness over Kinney et al. in view of Lauder et al. (USP 4,399,423) and Mueller et al. (EP 0 508 568).

##### **A. Claims 23-32 Are Nonobvious**

Claims 23-32 are nonobvious over Kinney et al. at least because the Kinney et al. reference does not disclose an apparatus including a container of "contaminated dehydrant agent" of claims 23 et al.

It is the examiner's position that xylene containers 7, 8 and 9 listed in the table at column 4 of Kinney et al. are clearant agents. It is also the examiner's position that container 10 "corresponds to the claimed container of contaminated dehydrant agent. However, container 10

is identified as a solution of absolute alcohol in Kinney et al. In order for container 10 to define a "contaminated dehydrant" agent as that term is used in claim 23, it would need to include both absolute alcohol and xylene with the xylene being present in an amount greater than the absolute alcohol. Kinney et al. does not include such a disclosure. For at least this reason, the examiner has failed to make out a *prima facie* case of obviousness. Moreover, Kinney et al. does not disclose or suggest a contaminated dehydrant container. Nowhere does Kinney et al. disclose or suggest that processing solutions including contaminants may be used in the invention.

Claim 24, which includes a container of "contaminated clearant agent" that is contaminated with the infiltrating medium is nonobvious and independently patentable over Kinney et al. It is the examiner's position that the clearant container (9) is considered to be a contaminated clearant agent "since it is used to clean the chamber after the infiltration steps". The examiner's logic is faulty. Claim 24 is directed to an apparatus including a container of clearant agent that is contaminated with the infiltrating medium. The contaminated liquid admixture, by definition, is located in a container. The examiner's position that the Kinney et al. clearant agent is a contaminated clearant agent merely because it becomes contaminated after use is irrelevant to meeting the claim 24 limitation. Simply put, Kinney et al. does not disclose an apparatus including a container that holds a combination of a clearant agent and an infiltrating medium that form a "contaminated clearant agent" as required by claim 24.

**B. Claim 6 is Nonobvious**

Claim 6 is directed to an apparatus that includes liquid containers containing a purge dehydrant and a purge clearant. The claimed purpose of the purged dehydrant is "for cleaning the processing chamber of clearant". (See claim 6). The claimed purpose of the purged clearant is "for cleaning the processing chamber of infiltrating medium". *Id.* It is the examiner's position that the Kinney et al. reference discloses an apparatus including such containers.

The Kinney et al. reference does not include containers including such fluids. Containers 9 and 10 of identified at the Table at column 4 of Kinney et al. are used in the cleaning cycle. According to Kinney et al.:

Further solutions such as xylene and alcohol will be contained in containers 9 and 10 for purposes of cleaning processing chamber 12 following a completed processing sequence and withdrawal of process tissue specimens from chamber 12. (column 4, lines 19-24).

It would be impossible for the solutions of containers 9 and 10 to be (1) a purge dehydrant for use in clearing the processing chamber of clearant; and (2) a purge clearant for use in clearing the processing chamber of infiltrating medium both during tissue processing. This is because the cleaning solutions of Kinney et al. are not used in the tissue processing steps. Instead, they are used to clean the chamber after the tissue process step is complete. For at least this reason, claim 6 is nonobvious and patentable over the prior art of record.

### **CONCLUSION**

Pending application claims 6 and 23-32 are patentable for the reasons indicated above. Favorable reconsideration and allowance of all pending application claims is, therefore, courteously solicited.

Respectfully submitted,

**McDonnell Boehnen Hulbert & Berghoff**

Dated: June 27, 2005

By: 

A. Blair Hughes  
Reg. No. 32,901  
(312) 913-2123  
Hughes@mbhb.com